

B. There is Insufficient Evidence to Prove that the Hudson Casino Decision Was Criminally Corrupted

1. A Campaign Contribution Can Form the Basis of a Federal Bribery Charge Only If an Official and a Contributor Specifically and Corruptly Agree that a Contribution Is Being Given and Received in Exchange for an Official Act

Federal bribery law is the principal legal framework against which the OIC has assessed the results of its factual investigation into potential corruption of the Hudson decision, so a brief review of that law is in order. It is illegal for a person to offer a bribe to a public official,⁷³⁵ and for a public official to accept a bribe.⁷³⁶ In order to convict a defendant of offering or accepting a

⁷³⁴(...continued)

decision-making, should not be confused with evidence of a subject's or defendant's popularity, which was not a factor in our decision. When the facts of a particular case and the need to enforce the rule of law require it, prosecutors muster the courage to bring worthy charges against popular defendants. "Public and professional responsibility sometimes will require the choosing of a particularly unpopular course." United States Attorneys' Manual at 9-27.230(B)(2) (Sept. 1997). Furthermore:

The potential that – despite the law and the facts that create a sound, prosecutable case – the factfinder is likely to acquit the defendant because . . . of the overwhelming popularity of the defendant or his/her cause, is not a factor prohibiting prosecution. For example, in a . . . case involving an extremely popular political figure, it might be clear that the evidence of guilt – viewed objectively by an unbiased factfinder – would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt whether the jury would convict. In such a case, despite his/her negative assessment of the likelihood of a guilty verdict (based on factors extraneous to the objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and desirable to commence or recommend prosecution and allow the criminal process to operate in accordance with its principles.

Id. at 9-27.220(B).

⁷³⁵18 U.S.C. § 201(b)(1).

⁷³⁶18 U.S.C. § 201(b)(2).